## REMARKS/ARGUMENTS

Prior to entry of this Amendment, the application included claims 1-9. Claims 1 and 2 have been amended. No claims have been canceled or added. Hence, after entry of this Amendment, claims 1-9 stand pending for examination.

### Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1-9 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection is moot in light of the current amendments.

### Rejections Under 35 U.S.C. § 103(a)

Claims 1-4, 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0204579 to Lutz ("Lutz") in view of U.S. Patent No. 6,327,677 to Garg et al. ("Garg"). Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lutz and Garg as applied to claim 2, and further in view of U.S. Patent No. 7,061,874 to Merugu et al. ("Merugu"). Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lutz and Garg as applied to claims 1 and 2 in view of U.S. Patent Publication No. 2003/0033395 to Sato ("Sato"). Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lutz and Garg as applied to claims 1 and 6 in view of U.S. Patent No. 6,223,222 to Fijolek et al. ("Fijolek"). Applicants respectfully transverse these rejections.

The combination of Lutz and Garg does not teach each and every element of claim 1. Claim 1 requires receiving a user request that includes path information between two terminals. The claim further requires that a measurement device be selected based on this path information. Thus, when a user sends a request that specifies path information between two terminals, the measurement device selecting means selects a measurement device based on this path information.

Lutz does not disclose at least 1) receiving a user request specifying path information and 2) a measurement device selecting means. Lutz discloses that a user selects a type of analyzer and sends this selection to the server; the user also specifies the network device to be subjected to network management. Thus, Lutz receives both analyzer selection information and information regarding the device to be monitored from the user. Claim 1, however, requires that the measurement device selecting means select a measurement device (analyzer), not the user. Claim 1 also requires that the user request include path information between two terminals. Lutz only discloses that the user select a single device to be monitored, not path information specified by two terminals.

As pointed out in the Office Action, Lutz also does not disclose a measurement rule setting means which sets a measurement rule based on path information.

Garg does not cure the deficiencies in Lutz. The Office Action suggests that Garg discloses a data collection module that requests information such as lost packets on one or more data communication links on any number of network devices, which may be interpreted to suggest that path information is known. Office Action, page 4. Garg does not teach or suggest that path information included between two terminals is received from a user. Garg does not use this supposed path information to select a measurement device. Instead, Garg collects information from various devices and applications at the same time rather than specifying a specific device based on user-requested information from which to gather information. That is, Garg does not receive information from a user specifying what to measure and where. Instead, Garg collects information from various devices or applications. Indeed, there is nothing in Garg to suggest that a user specify path information between two terminals and that the apparatus then select a measurement device based on this path information.

Garg also does not disclose a measurement rule setting means which sets measurement rules in the selected measurement device. Garg collects information from devices or applications and provides this information to an analysis module. The analysis module receives one or more analysis rules. Simply put, an analysis module is not a measurement device and an analysis rule is not a measurement rule. Thus, Garg does not disclose a measurement rule setting means which sets measurement rules in the selected measurement device.

With regard to claim 2, Lutz and Garg do not teach or suggest a storage means that stores information indicating a measurable network range. The Office Action assumes that the measurable network range must be stored in order to measure performance between two devices. First, Garg does not necessarily disclose measuring performance between two devices as assumed. Garg collects information such as network utilization, lost packets, response time, or the number of errors. Each of these measurements may be made without knowing the network range. For instance, network utilization is a measure of the amount of digital data per time unit that is delivered over a link or device and does not require range information. Lost packets simply require counting packets sent versus packets received and, therefore, does not necessitate knowing the network range. Response time only requires comparing times between a request and a response and the number of errors only requires a counter that counts errors, both of which do not require range information as suggested.

With regard to claim 3, Garg does disclose storage devices but does not specifically disclose storing a measurement type. As noted with regard to claim 1, Garg does not specify a measurement type. Instead, Garg collects information from a number of devices and applications. Thus, Garg does not specify a specific measurement type and, therefore, there is no need to store an unspecified measurement type. Moreover, Garg does not disclose a storage device for at least one process. While Lutz discloses Applets, Lutz does not disclose a storage device that links a measurement type with an Applet.

With regard to claim 4, neither Garg nor Lutz disclose selecting a specific measurement device based on the measurement type. Thus, there is no need in either disclosure to store measurement type and device information in association with each other.

With regard to claim 5, as noted above with regard to claim 1, Lutz and Garg do not teach or suggest a measurement rule setting means. Thus, any storage associated with the devices in Lutz or Garg would not need to store a maximum number of rules for each measurement device.

Meguru does not cure the deficiencies in Lutz and Garg. FIGS. 2 and 4 show a flowchart configuring rules to attain a leaf node. A group of rules is classified as a "bucket size" and "maximum number of rules" is an element of a threshold of "bucket size" and indicates the maximum number of rules within a leaf node. "Maximum number of rules" in Meguru indicates the maximum rules in a leaf node, but that cannot be set within an apparatus. Thus, Meguru does not teach a maximum number of rules within a measurement device. Moreover, in Meguru, there is no description about implementing a comparison between a maximum number of rules and the number of rules being set within an apparatus, such as a measurement device. Therefore, "maximum number of rules" of Meguru and "maximum number of rules" in claim 5 are not the same.

With regard to claims 6 and 9, FIG. 4 of Lutz shows calculated data transmitted to the analyzer 13 and not a method for calculating a value corresponding to a measurement type being transmitted, as required by the claims.

With regard to claim 7, as noted in claim 1, Garg teaches analysis rules sent to the analyzer and not measurement rules to the measurement device. Moreover, the claim includes information for identifying the method of calculating a value transmitted to the calculating device prior to setting the measurement rule in the measurement device. Even if Garg taught these elements, Garg does not disclose a specific order.

In claim 8, if a measurement device having a problem is selected, the measurement device selecting means selects alternate measurement devices, such as a measurement point obtained by the path information in the measurement range or a measurement device adjacent to the network range. Garg does not teach or suggest selecting a measurement device based on path information between two terminals. Thus, Garg, in combination with Sato, cannot find an appropriate substitute device without the required path information, which is not taught by Garg or Sato.

## Conclusion

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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